

## Message Text

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PAGE 01 STATE 031783

43

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TO AMEMBASSY LONDON

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TAGS: EINV, ETRD, UK

SUBJECT: COUNTRY ELIGIBILITY FOR GENERALIZED PREFERENCES  
(GSP) UNDER SECS. 502 (B) (4) AND (6) OF TITLE V OF THE  
TRADE ACT OF 1974

REF: (A) STATE 282968; (B) STATE 282967

1. AS REPORTED REF B, BEFORE GSP CAN BE IMPLEMENTED UNDER  
THE TRADE ACT OF 1974, THE INTERNATIONAL TRADE COMMISSION  
(ITC) MUST INVESTIGATE THE DOMESTIC ECONOMIC EFFECT OF PRE-  
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PAGE 02 STATE 031783

FERENTIAL DUTY-FREE TARIFF TREATMENT ON IMPORTS OF THOSE

ARTICLES PROPOSED FOR SUCH TREATMENT FROM COUNTRIES DESIGNATED IN AN EXECUTIVE ORDER AS BENEFICIARY DEVELOPING COUNTRIES. THIS MESSAGE DISCUSSES COUNTRY ELIGIBILITY UNDER THE NATIONALIZATION AND ARBITRATION PROVISIONS OF THE ACT.

2. SEC. 502 (B) (4) OF TITLE V OF THE ACT PROHIBITS THE PRESIDENT FROM DESIGNATING AS ELIGIBLE FOR GSP ANY COUNTRY WHICH HAS NATIONALIZED THE PROPERTY OF US CITIZENS (INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS FIFTY PERCENT OR MORE BENEFICIALLY OWNED BY US CITIZENS), OR TAKEN OTHER ACTIONS WITH SIMILAR EFFECT, UNLESS HE DETERMINES THAT FAIR COMPENSATION IS BEING PAID, THAT SUCH COUNTRY IS "OTHERWISE TAKING STEPS TO DISCHARGE ITS OBLI-

GATIONS UNDER INTERNATIONAL LAW," OR THAT THE PARTIES HAVE SUBMITTED THE DISPUTE TO ARBITRATION. SEC. 502 (B) (6) APPLIES A SIMILAR PROHIBITION TO ANY COUNTRY WHICH FAILS TO ACT IN GOOD FAITH TO RECOGNIZE AS BINDING OR TO ENFORCE AN ARBITRAL AWARD IN FAVOR OF US CITIZENS (AGAIN INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS FIFTY PERCENT OR MORE BENEFICIALLY OWNED BY US CITIZENS). FYI. UNLIKE THE HICKENLOOPER AMENDMENT (SEC. 620 (E) OF THE FOREIGN ASSISTANCE ACT), SEC. 502 (B) (4) (D) REQUIRES A PRESIDENTIAL DETERMINATION TO BE MADE AND FURNISHED TO CONGRESS REGARDING THE APPLICATION OF THAT SUBSECTION TO ALL UNRESOLVED DISPUTES. THIS NEW REQUIREMENT REINFORCES THE NEED FOR THE USG TO MONITOR AND TO ASSIST IN RESOLVING OUTSTANDING DISPUTES INVOLVING US PROPERTY. END FYI.

3. IT WOULD BE HIGHLY DESIRABLE FOR THE ITC TO UNDERTAKE ITS PRODUCT REVIEW WITH RESPECT TO THE BROADEST POSSIBLE LIST OF POTENTIAL BENEFICIARIES, AND FOR THE COMMISSION TO BEGIN ITS WORK AS SOON AS POSSIBLE. WE WOULD PREFER TO CONDUCT A DETAILED INVESTIGATION OF CASES WHICH MIGHT AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS. 502 (B) (4) AND (6) WHILE THE ITC STUDY IS IN PROGRESS. FOLLOWING DISCUSSIONS WITH CONGRESSIONAL STAFFS, HOWEVER, IT IS NOT CLEAR THAT THE INTERIM WAIVER MENTIONED PARA. 4, REF B, WILL BE USED. SEVERAL ALTERNATIVE METHODS OF ACCOMPLISHING OUR OBJECTIVE ARE ALSO UNDER CONSIDERATION, BUT IT IS LIMITED OFFICIAL USE

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PAGE 03 STATE 031783

POSSIBLE THAT DETERMINATIONS OF COUNTRY ELIGIBILITY MAY HAVE TO BE MADE BEFORE THE ITC CAN BEGIN ITS PRODUCT ANALYSIS.

4. ACCORDINGLY, THE EMBASSY IS REQUESTED TO INFORM THE DEPARTMENT ASAP OF THE STATUS OF OUTSTANDING CASES WHICH MIGHT AFFECT THE ELIGIBILITY OF DEPENDENCIES OR ASSOCIATED STATES OF THE HOST COUNTRY UNDER SECS. 502 (B) (4) AND

(6). CITATION TO PRIOR REPORTING WILL SUFFICE IF NO  
SIGNIFICANT DEVELOPMENTS HAVE OCCURRED IN THE INTERIM.

5. THE STARTING POINT FOR EVALUATION SHOULD BE THE TEXT  
OF THE LEGISLATION ITSELF. UNTIL DEFINITIVE LEGAL ANA-  
LYSIS OF 502 (B) (4) IS COMPLETED, POSTS SHOULD ASSUME IT  
APPLIES TO ALL PROPERTY (BOTH COMMERCIAL AND NON-COMMER-  
CIAL) OF US CITIZENS, WITHOUT REGARD TO VALUE. AS A  
RULE OF REASON," WE ARE LIMITING THE EVALUATION TO CASES  
ARISING IN THE POST-WAR ERA, I.E., SINCE JANUARY 1,  
1946, OR THE DATE OF INDEPENDENCE OF THOSE COUNTRIES RE-  
ACTIONS (SUCH AS COERCED PARTICIPATION, SEVERE CURTAIL-  
ACTIONS (SUCH AS COERCED PARTICIPATION, SEVERE CURTAIL-

MENT OF MANAGEMENT PREROGATIVES, OR FORCED CANCELLATION  
OR RENEGOTIATION OF CONTRACTS) MAY BE EXPROPRIATORY IN  
EFFECT WHILE STOPPING SHORT OF OUTRIGHT TAKEOVER, POSTS  
ARE REQUESTED TO INFORM DEPARTMENT OF SUCH CASES TO EN-  
ABLE US TO EXERCISE JUDGMENT IN DETERMINING WHETHER  
"NATIONALIZATION" HAS OCCURRED WITHIN THE MEANING OF  
502 (B) (4) (A)-(C). JUDGMENTS MUST ALSO BE MADE TO  
DETERMINE, INTER ALIA, WHETHER THE CRITERIA OF 502 (B)  
(4) (D) ARE BEING MET, AND WHETHER "GOOD FAITH" IS PRESENT  
UNDER 502 (B) (6).

6. WOULD ALSO APPRECIATE MISSION COMMENTS REGARDING  
WHAT STEPS USG MIGHT APPROPRIATELY TAKE TO BRING THESE  
PROVISIONS TO THE ATTENTION OF HMG AND TO ENCOURAGE RE-  
SOLUTION OF OUTSTANDING DISPUTES.

7. FYI. THE FOLLOWING UK DEPENDENCIES ARE POTENTIAL  
BENEFICIARIES: HONG KONG, BELIZE, BERMUDA, BRITISH  
ANTARCTIC TERRITORY, BRITISH INDIAN OCEAN TERRITORY  
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PAGE 04 STATE 031783

(ALDABRA, FARQUHAR, CHAGOS ARCHIPELAGO, DES ROCHES),  
BRITISH PACIFIC OCEAN (GILBERT AND ELLICE ISLANDS, BRITISH  
SOLOMON ISLANDS, NEW HEBRIDES CONDOMINIUM, PITCAIRN IS-  
LANDS), BRUNEI, CAYMAN ISLAND AND DEPENDENCIES, FALKLAND  
ISLANDS (MALVINAS) AND DEPENDENCIES, GIBRALTAR, ST.  
HELENA (INCLUDING ASCENSION, GOUGH ISLAND AND TRISTAN DE  
CUNHA), SEYCHELLES (INCLUDING AMIRANTES), TURKS AND  
CAICOS ISLANDS, WEST INDIES--LEEWARD ISLANDS (ANTIGUA,  
ST. KITTS-NEVIS-ANGUILLA, BRITISH VIRGIN ISLANDS) AND  
WINDWARD ISLANDS (DOMINICA, ST. LUCIA AND ST. VINCENT).  
END FYI. INGERSOLL

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## Message Attributes

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